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**PUBLIC SAFETY CIVIL
SERVICE COMMISSION**

**BEFORE THE PUBLIC SAFETY CIVIL SERVICE COMMISSION
OF THE CITY OF SEATTLE**

FELTON MILES,
Appellant,

vs.

SEATTLE POLICE DEPARTMENT

CITY OF SEATTLE
Respondent

**DECISION REGARDING REMEDIES
AND FINAL ORDER**

PSCSC No. 07-007

I. Introduction

In its earlier preliminary decisions on this appeal, the Commission determined that Appellant Miles had not been discharged "in good faith for cause", as required by SMC Chapter 4.08. The Commission reduced the termination to a suspension. The Commission also directed the parties to attempt to agree on any appropriate additional relief and, if necessary, to submit any disputed issues to the Commission for resolution.

The Commission directed the parties to submit briefs and other information in support of their position on any remaining disputed issues simultaneously by

1 November 10, 2008. Appellant Miles filed a brief on that date. The Department
2 filed its brief on November 12, two days late. The Department offers no motion or
3 explanation for the late filing.

4 Officer Miles objected to the Police Department's brief as untimely filed.
5 However, Officer Miles demonstrates no prejudice as a result of the Department's
6 late filing. The Commission is nevertheless concerned about the late Departmental
7 filing, particularly since a late brief that was intended to be a simultaneous filing
8 may give one party an unfair advantage. The Commission has accordingly not
9 relied on the Department's brief in reaching this decision.

10 **II. Issues**

11 The parties have agreed on all issues regarding relief except for two:

- 12 1) Attorneys' fees; and
- 13 2) Interest on the otherwise agreed-upon amount of back pay due.

14 **III. Decision**

15 The Commission, after considering Officer Miles' submission, has reached
16 the following decision regarding the two outstanding issues.

17 **A. Attorney's fees**

18 Administrative agencies have authority to award attorneys fees only if their
19 enabling legislation or other law expressly so provides.¹

20 **1. The Commission's Enabling Statute**

21 _____
22 ¹ See discussion in section III.A.2 below.

1 SMC 4.08.100.B does not provide the Commission with such authority. To
2 the extent that it addresses attorneys' fees at all, it provides that each party may be
3 represented by the person of their choosing at their own expense.

4 B. All hearings pursuant to this section shall be open to the public at the
5 request of the employee. Hearings shall be held after due notice of the time
6 and place of hearing to the affected employee. The employee has the right
7 to representation of his/her choosing and at his/her own expense. (emphasis
8 added)

9 Other City of Seattle administrative agencies do have such express authority.
10 For example, SMC 14.06.120 expressly provides that the Office of the Hearing
11 Examiner may award reasonable attorneys fees in a human rights case.² The City
12 legislative authority could, but has not chosen to, grant the Commission similar
13 authority.

14 2. Other Authority

15 Appellant Miles cites *Knox v. Microsoft* for the proposition that "To make
16 whole, under Washington law, means to restore the claimant to the financial
17 position he would have been in had the initial unlawful conduct not occurred".³

18 _____
19
20 ² 14.06.120.C provides ... "The Hearing Examiner may grant any relief that could be ordered
21 by a court, including actual damages, damages for loss of the right to full enjoyment of any
22 place of public accommodation, injunctive or equitable relief, reasonable attorney's fees and
costs and any other appropriate remedy, except that damages for humiliation and mental
suffering shall not exceed Ten Thousand Dollars (\$10,000.00)" (emphasis added).

³ Appellant's Post Hearing Brief, p. 3-4.

1 However, *Knox* was a breach of contract case, and its holding expressly applies
2 general breach of contract damages in the context of a wrongful discharge breach
3 of contract case. The Commission is not convinced that *Knox* authorizes, let alone
4 requires, the Commission to award attorneys' fees in an administrative appeal
5 under SMC Chapter 4.08.

6 Appellant Miles also cites labor arbitrations such as *In re: Port of Tacoma*⁴.
7 Labor arbitrations are also creatures of contract, not statute. They apply breach of
8 contract damages in the context of the applicable collective bargaining agreement.
9 The Commission does not read the labor arbitration cases to authorize, let alone
10 require, the Commission to award attorneys' fees in an administrative appeal under
11 SMC Chapter 4.08.

12 Appellant also discusses *Trachtenberg v. Department of Corrections*.⁵
13 *Trachtenberg* holds that an demonstrative appeal to the State Personnel Board
14 (Board) is not an "action" for a "judgment for wages" under RCW 49.48.030, and
15 therefore the fee provisions of that statute do not apply in such an appeal.

16 However, the *Trachtenberg* Court went on to explain that "administrative
17 agencies, like the Board, do not have authority to determine issues outside their
18 delegated functions."⁶ The Commission concludes that the *Trachtenberg* reasoning
19 applies equally to the Commission and, for the reasons discussed above, that SMC
20

21 ⁴ 99 LA 1151 (1992)

22 ⁵ 122 Wash.App. 491 (2004).

⁶ *Id.*, at p. 497

1 Chapter 4.08 does not delegate to the Commission the authority to award attorneys'
2 fees.

3 The Commission therefore determines that it does not have the authority to
4 award attorneys' fees. However, even if the SMC or other law were interpreted to
5 authorize the Commission to award reasonable attorneys' fees, the Commission
6 has not traditionally awarded such fees and declines to do so in this case. For all
7 these reasons, the Commission denies Appellant Miles request for attorneys' fees.⁷

8 **B. Interest**

9 It is somewhat less clear whether the Commission has authority to award
10 interest as part of a back pay award. Officer Miles offers no case authority that the
11 Commission has muse, or even may, award interest as a component of back pay.
12 He relies on the general "make whole" provisions of *Knox*. The Commission
13 determines, for the same reasons discussed above in the section regarding
14 attorneys' fees, that *Knox* does not authorize, let alone require, an administrative
15 body such as the Commission to award interest as part of back pay.

16
17
18 _____
19 ⁷ Finally, Appellant Miles argues, with a supporting declaration, that he incurred substantial attorney's fees
20 before, during, and after the Commission hearing in this appeal. Those are essentially policy arguments that
21 the City legislative authority should grant the Commission the authority to award fees, not legal arguments that
22 the Commission presently has such authority.

